



EMPLOYMENT TRIBUNALS

Claimant: Miss K Sweetman

Respondent: Fordent Properties Limited

HELD AT: Liverpool

ON: 23 May 2017

BEFORE: Employment Judge T V Ryan
Dr L Roberts
Mrs A Ramsden

REPRESENTATION:

Claimant: Mr B Henry, Counsel

Respondent: Mr J Jenkins, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is:

1. The claimant made the following protected disclosures to the respondent, namely:
 - 1.1 In late September 2016 she disclosed to the respondent's Home Manager at its Orchard Manor site information which in the reasonable belief of the claimant tended to show that the respondent had failed, was failing and was likely to fail to comply with any legal obligation to which it was subject, and that the health and safety of individuals had been, was being or was likely to be endangered.
 - 1.2 On either the same day or the following day as the above mentioned disclosure the claimant made protected disclosures to the Care Quality Commission to the same effect as detailed above.
2. The respondent subjected the claimant to a detriment by the words spoken by its Home Manager at Orchard Manor in late September 2016, which words were uttered on the ground that the claimant had made the said protected disclosures.
3. The respondent dismissed the claimant by reason of, or if there was more than one reason where the principal reason was, that the claimant had made the said protected disclosures. The claimant's dismissal was automatically unfair.

4. The claimant's claim, if any, that she was unfairly dismissed contrary to the principles of section 98(4) Employment Rights Act 1996 ("ordinary unfair dismissal") is dismissed as the claimant did not have qualifying employment.
5. The claimant's claim that the respondent breached her contract by failing to give her notice of termination in accordance with her contract fails and is dismissed.

REASONS

1. The Issues

At the outset of the hearing an agreed List of Issues was presented to the Tribunal and this appears as document entitled C2 (the trial bundle being C1) and all page references hereafter are to the trial bundle unless otherwise stated. The List of Issues at C2 was further expanded upon by way of clarification and that is reflected in the repetition of the agreed issues set out below. Although the claimant appeared to have claimed "ordinary unfair dismissal" and that the respondent breached her contract with regard to contractual notice provisions, it is noted that the claimant did not have qualifying employment for an ordinary dismissal claim, and the breach of contract claim does not feature in the agreed List of Issues which was an agreed list drafted initially by counsel for the claimant; it appears that the breach of contract claim was not being pursued. The claimant also submitted an opening written submission (C3) and Mr Henry made oral submissions at the conclusion of the case, neither of which refers to either a claim or "ordinary unfair dismissal" or a claim of breach of contract with regard to notice. It appears that those claims were abandoned, but in any event the Tribunal has made a formal judgment in respect of them. That said, the agreed List of Issues is as follows:

1.1 Detriment as a result of a protected disclosure –

- 1.1.1 Did the claimant make a disclosure of information to the home manager at Orchard Manor in late September 2016 regarding understaffing, the provision to residents of incontinence pads and the unqualified administration of medication by the claimant to residents, and on the same day or the following day repeat those same disclosures to the Care Quality Commission ("CQC")?
- 1.1.2 In respect of the alleged disclosures, did the disclosure of information tend to show that the respondent has failed, is failing or is likely to fail to comply with any legal obligation to which it was subject, specifically the Health and Social Care Act Regulations 2014, and that the health or safety or any individual has been, is being or is likely to be endangered?
- 1.1.3 Did the claimant have a reasonable belief that the information tended to show a breach of legal obligation or endangerment to health and safety?
- 1.1.4 Did the claimant have a reasonable belief that the disclosures were made in the public interest?

- 1.1.5 In respect of the alleged disclosure to the CQC, did the claimant reasonably believe that the person to whom she made the disclosure had responsibility for the relevant failure?
- 1.1.6 What is the alleged detriment the claimant suffered as a result of the protected disclosures in circumstances where she says she was threatened by the home manager upon making the disclosure?
- 1.1.7 Was the alleged detriment on the ground that the claimant had made a protected disclosure?
- 1.2 Automatically unfair dismissal –
 - 1.2.1 The same issues in respect of this claim as appear above at 1.1.1-1.1.6.
 - 1.2.2 Was the reason (or, if more than one, the principal reason) for the dismissal that the claimant made a protected disclosure?

2. The Facts

- 2.1 The respondent is a care provider, being part of a group that owns and manages nine Residential Homes for people aged over 65. It employs approximately 500 people in the group. One of its homes is called Orchard Manor where there are 130 employees. It has a HR department and its manager is Lisa Kewley (who attended Tribunal as the only witness for the respondent), and Ms Kewley had an assistant named Beth Leahy. Ms Kewley and Ms Leahy were both based in offices at Orchard Manor. The respondent operates under a number of procedures and written policies including those relating to disciplinary and grievance matters and whistle-blowing. The Registered Home Manager at Orchard Manor was Miranda De Biasi.
- 2.2 The claimant (who gave evidence alone) was employed by the respondent from 19 July 2016 until her dismissal ostensibly for failure of her probationary period on 30 September 2016. She was employed as a night care assistant working four nights per week at Orchard Manor. She is an experienced care worker. Her employment with the respondent was subject to a six month probationary period and should have been, but was not, subject to regular appraisal and probationary review.
- 2.3 The claimant's line manager was Deborah Owen, the senior healthcare assistant. Karen Woollen was the Home Nurse. One of the claimant's colleagues on the day shift was Deborah Warren. The respondent relied on the use of a large number of agency workers at Orchard Manor, where there were some 30 residents divided into two units called Maple and Willow.
- 2.4 On a date unknown to either party, in mid to late September 2016, the claimant, along with Deborah Owen and Stephanie Williams, another healthcare assistant, visited the Home manager as a delegation to raise

with her a number of issues that had been troubling them and which they had discussed between themselves regarding the care of residents. What was of concern to this delegation was a feeling that the Units were understaffed, particularly at night. They shared a concern that there was an insufficient number of staff to attend adequately to residents who required intimate and hygienic attention during the night and to assist in getting the residents toileted, washed and dressed in readiness for the handover to the day staff. Of particular concern to the claimant was that she felt that there was inadequate provision of incontinence pads for residents at night time, a matter that she had taken up with the Home Nurse, Karen Woollen, only to be told that the policy was that there would be one incontinence pad per resident per night. The claimant also raised with the Home manager in this context that she had received instructions from Karen Woollen to administer medication, which she was not qualified to do. These matters were all agreed to, raised by and emphasised by Deborah Owen, Stephanie Williams and the claimant. Being the senior person, Deborah Owen took the lead specifically and in general talking about staffing levels and the provision of care during the nights. The claimant amplified the general concern, specifically raising the provision of incontinence pads and the instruction to administer medication. The claimant and her colleagues in the delegation had concerns that these matters failed to provide adequately for the personal needs, health, safety and hygiene of the residents in accordance with the legal obligations imposed on the respondent and on them as professionals. They considered that these matters had endangered and were likely to endanger the health and safety of the residents. They believed these matters to be true and of genuine concern. They raised the matters in the best interests of the residents at Orchard Manor specifically, but of the respondent's residents generally, as they understood that the matters about which they complained were general policy matters. The delegation's concerns were to effect changes and improvements to the provision of care of the respondent's residents.

- 2.5 On being told all of the above by Ms Owen, Ms Williams and the claimant, the Home manager confirmed to the claimant that Karen Woollen had adequately and correctly explained the respondent's policy about the provision of incontinence pads which were a matter of prescription, and that generally the prescription was of three pads per person for each 24 hour period such that they were being effectively rationed to one at night. This was confirmed as being the policy and the Home manager said to the claimant: "I won't be blackmailed. If you don't like it you can leave". This was understood by the claimant to amount to a threat that she would either have to do as she was instructed or she should leave, and in other words could not remain in employment other than through following a policy that the claimant believed to be a breach of obligation and a lack of care endangering the residents' health and safety. The claimant felt threatened.
- 2.6 The claimant understood from the exchange described above that there would be no improvement with regard to the matters raised by her and her colleagues directly with the Branch manager. Later that day, or possibly the next day, she telephoned the CQC and repeated her concerns. The

CQC acted upon the concerns and made contact with the Branch manager within a few days. The CQC had already audited and inspected Orchard Manor and had produced a critical report requiring improvement; this was following an inspection in April 2016 where the respondent's service was rated as "requires improvement".

- 2.7 The inspection report from April 2016 highlighted breaches of regulations with regard to a number of matters and required the implementation of an action plan and compliance with that plan by 31 October 2016. The claimant's report to CQC at the end of September 2016 jeopardised the respondent's position with regard to establishing compliance with the approved action plan. In fact at least in part as a consequence of the claimant's report to CQC in September 2016 there was an unannounced comprehensive inspection on 8, 21 and 23 November 2016 by CQC. In the eventual report, which commences at page 72, the CQC confirms receipt of a report of low staffing levels, restrictions on the use of incontinence products and an instruction to staff to administer medication where they did not feel confident to do so, and training on nursing procedures had not been given.
- 2.8 On 28 September 2016 the claimant attended work as usual and completed a handover with a member of the day staff, Karen Harrison. Ms Harrison told the claimant that the Home manager "had one on her", meaning that she was in a bad mood, and added that the claimant would be "up the road" because the Home manager knew the claimant had made a report to the CQC. The claimant took this as an indication that the Home manager was displeased with her and would dismiss her. The respondent's witness, Ms Kewley, said in evidence that she was told that at about the time of the handover the claimant said words to the effect that the fewer residents the night shift staff assisted in the morning the better it would be for the day staff, as it would show to management that more staff was required. The claimant denies having made that statement. The Tribunal believed the claimant's denial and finds that she did not make that statement or act in accordance with that principle by failing to attend appropriately to residents under her care during that shift.
- 2.9 The Tribunal accepts the claimant's version of events when she says that she conducted her duties appropriately in the night shift of 28-29 September 2016. The claimant produced the document at pages 93 and 94 as her handwritten notes of the care given to the residents occupying numbered rooms in the Regency and Victoria floors of Orchard Manor. It was the claimant's practice to list the residents against their respective room numbers and to make brief abbreviated notes of her attendances upon them to assist her in completing the formal care records and on handover. Having completed the shift on 29 September 2016 she put the list at pages 93 and 94 in her bag and in the boot of her car, and as she did not return to work after 29 September 2016 she had no further call upon that bag and forgot that she had the list in it. There were no lists from previous shifts as they would have been destroyed following respective handovers. The claimant has only recently come across the list, which she is able to specifically relate to the shift of 28/29 September 2016, not

least because of the deletion of the name of one of the residents who she knows died at about this time. The claimant's evidence is that the list relates to the shift in question and the Tribunal accepted her evidence.

- 2.10 On the morning of 29 September 2016 someone prepared the document at page 36 which appears to have been signed by Ms Warren and a Mr T Vernon (who is unknown to the claimant) reporting that a member of the previous night shift had made a remark about not attending to residents which would assist in any argument about needing more staff, and listing by reference to room numbers residents who were found in a soiled condition at the commencement of the day shift on 29 September 2016. The description of the residents is pitiful in that they are each described as being "soaked", being a reference to being soaked in urine having soiled themselves during the night, and one of the residents is described as being "soaked to his neck and covered in faeces".
- 2.11 The claimant had handed over to Ms Warren and Karen Harrison on 29 September 2016. She had been working with an agency worker. The respondent says that following this shift they instructed the agency to no longer send that agency worker to its premises.
- 2.12 The details set out at page 36 by reference to room number and the gender of the respective occupants is inconsistent with the details shown at pages 93 and 94 and the claimant's evidence. The respondent has not disclosed all of the records in respect of each of the residents at Orchard Manor on 28 and 29 September 2016, and therefore neither of those documents can be fully compared with the residents' daily hygiene charts to identify room occupancy. In fact and in any event Ms Kewley's evidence is that the claimant's recording of events of the night as shown in individual residents' charts is consistent with her having performed her duties appropriately and is consistent with her evidence to the Tribunal, but wholly inconsistent with page 36 as regards the work that she did and how the alleged state of the residents can be explained. The Tribunal believes that the document at page 36 and the alleged report to management about residents occupying certain numbered rooms is unreliable. The Tribunal prefers the evidence of the claimant supported by her document at pages 93 and 94 and the records insofar as they were commented upon and partially by the respondent when it said that they gave the impression of effective service by the claimant.
- 2.13 The report made by Ms Warren and Mr Vernon at page 36 was used as a pretext to dismiss the claimant. The Tribunal accepts the evidence of Ms Kewley that she was absent from work and on holiday during this period, only returning to work on 29 September 2016. Furthermore, during that time and following the preparation of the report at page 36 her assistant, Beth Leahy, liaised with the Registered Home Manager as to their plan of action with regard to the claimant. The claimant was to be invited into work to discuss an "incident". Ms Leahy telephoned the claimant with such an invitation. The invitation was to answer questions and for the respondent to address alleged underperformance and/or misconduct and breach of

duty with the respondent relying on page 36 as its evidence. The meeting on 30 September 2016 was not a planned probation review.

- 2.14 On 30 September 2016 the claimant attended work in response to Beth Leahy's invitation, but instead of meeting with the Registered Home Manager she was to meet Ms Kewley and Ms Leahy. Ms Kewley's evidence was faltering, confusing and at times not credible when she tried to explain who she spoke to and who she did not speak to at various times on 29 and 30 September 2016 in advance of the meeting with the claimant, and subsequent to the meeting with the claimant and before telling her of her decision with regard to the claimant's continued employment. The Tribunal finds that Ms Kewley spoke to Ms Leahy and the Registered Home Manager before her meeting with the claimant and after that meeting but before announcing her decision on the claimant's future employment. In fact it is apparent from Ms Kewley's answers under cross examination, and the Tribunal finds, that she consulted Ms Leahy and the Registered Home Manager just before announcing her decision and with a view to finalising that decision. She says she needed to know the implications on staffing levels of any decision to dismiss the claimant. The Tribunal accepts that but was unconvinced by Ms Kewley's evidence that she was wholly unaware that the claimant had made a report to the CQC and that the Registered Home Manager was dissatisfied about it. In all of the circumstances, and in the light of the way in which Ms Kewley gave her evidence, the Tribunal concludes that she knew of the CQC report made by the claimant and she knew the Registered Home Manager's adverse opinion of the fact of the claimant having made that report. In the light of Ms Kewley's unconvincing denials of this the Tribunal draws an inference from all of the circumstances that the claimant's report to the CQC was discussed with Ms Kewley and formed the basis of the decision to dismiss her.
- 2.15 In her capacity as Regional HR Manager Ms Kewley met with the claimant at 2.15pm on 30 September 2016 with Ms Leahy taking notes. Minutes are at pages 42-44. This meeting was effectively an investigatory interview under the disciplinary procedure. The only prior notification received by the claimant was a telephone call from Beth Leahy to have a "chat about an incident".
- 2.16 Ms Kewley denied considering the claimant's performance generally throughout her period of probation other than in respect of the night shift of 28/29 September 2016. She did not look at the claimant's records. She did not canvass the views of her colleagues or, insofar as they were able to express their views, the residents (even if that was appropriate which it probably was not). She spoke again to Ms Warren about the allegations being made against the claimant. As stated above, she spoke again to Beth Leahy and to the Registered Home Manager.
- 2.17 Ms Kewley's evidence is that she did not need to carry out any further investigations as she was so affected by the report at page 36. She felt that the records that showed the claimant had worked appropriately were suspicious and the whole situation was abnormal such that she did not

believe them, but she did believe the report at page 36 and took it at face value. She placed blame on the claimant. At this point it should be noted that Ms Kewley did not do clinical work. She was not wholly familiar with, although she had some understanding of, the residents' daily hygiene and other charts. She was not generally involved in probation reviews. She was not the claimant's line manager. She was drafted in to carry out the disciplinary investigation and dismissal at short notice in what she conceded herself were unusual circumstances. She did not speak to Tony Vernon who was allegedly the co-signatory of the document at page 36.

- 2.18 In consultation and liaison with Beth Leahy and the Registered Home Manager Ms Kewley decided to dismiss the claimant because she had made disclosures which would have ramifications for the respondent in the light of the CQC's reaction to the reports. They decided to use the report at page 36 as a pretext. The Tribunal cannot make any findings as to the actual author of the page 36 report or its instigator.
- 2.19 On the afternoon of 30 September 2016 Ms Kewley telephoned the claimant to say that she was dismissed. Ms Kewley has said in evidence that she had merely decided the claimant's probationary period should be brought to an end because of the unsatisfactory events of 28/29 September 2016. The Tribunal finds that the claimant was ostensibly dismissed for gross misconduct which had not been proven. In telephoning the claimant on 30 September 2016 Lisa Kewley said that she was "sacked".
- 2.20 The claimant did not receive confirmation of the dismissal in writing. The respondent has produced a document dated 3 October 2016 at page 47 entitled "Probationary review meeting outcome". That letter confirms that owing to concerns over standards of care provided to residents the claimant had failed her probationary period and her contract would be terminated. The letter says that she was given a right to appeal. Ms Kewley says that she has no reason to believe that the letter was not posted by her assistant, Beth Leahy. We did not hear evidence from Beth Leahy. The letter does not bear the claimant's address and its format is therefore inconsistent with a later letter that appears at page 50 which is on the same headed notepaper where the claimant's address is shown. We believe the claimant when she said she did not receive the letter.
- 2.21 In reaction to the telephone call from Lisa Kewley dismissing her, the claimant wrote to the Registered Home Manager on 3 October 2016 and that letter is at pages 48 and 49. Whilst the word "appeal" is not used, the claimant put forward her arguments against the decision; she indicated that she had been to ACAS and expressed her wish at the very least for her "name not to be shamed" and a requirement for "financial compensation at the very least". She said, however, that she hoped the matter can be resolved and she said that she would appreciate a response within 14 days. This was the claimant's attempt at writing an appeal against dismissal. In all but name that is what it does.

- 2.22 By a letter dated 5 October 2016 at page 50 Lisa Kewley acknowledged receipt of the claimant's letter of 3 October 2016 and confirmed that she would receive a payment in lieu of her one week notice period and any outstanding wages and accrued holiday pay. The claimant has received the monies that were due to her in this regard. The respondent did not otherwise deal with the claimant's appeal.
- 2.23 There were clear conflicts of evidence between the two witnesses we heard. We found the claimant to be clear, concise, cogent and credible. Not all of the things that she gave in evidence were referred to in her ET1 or in her written statement, however the Tribunal found her to be straightforward and uncomplicated in giving her evidence which was consistent with the available documentation from the CQC, and the respondent did not produce any contrary documentation save for the report at page 36. In fact the respondent's case was that Ms Kewley did not accept the accuracy of the available records (residents' daily hygiene charts).
- 2.24 On the other hand, we found Ms Kewley's evidence to be unconvincing. She was particularly uncertain when challenged as to the sequence of events around 29/30 September 2016 and who she spoke to, when and in what order and to what effect. In all the circumstances of the case it was incredible that she could have been at work for two days following her holiday and not to have known that a report had been made to the CQC, that the Registered Home Manager believed the claimant was responsible, and that the Registered Home Manager was annoyed about it. Ms Kewley's office was based at Orchard Manor. Her assistant, Beth Leahy, had liaised with the Registered Home Manager to arrange the meeting with the claimant on 30 September 2016, and then delegated it to Ms Kewley. Those three were then in consultation and discussion before the announcement of the decision to dismiss. On the basis of the manner in which Ms Kewley gave her evidence and some of its inconsistencies, and drawing an inference from the other available facts found, the Tribunal has no hesitation in concluding that Ms Kewley was fully aware of the report to the CQC report, its author and the wish on the part of the Registered Home Manager to take action against the claimant. Otherwise the circumstances of Ms Kewley's involvement in what she called a probation review would be wholly extraordinary and inexplicable.

3. The Law

- 3.1 The List of Issues at document C2 sets out the legal tests obtained from statutory and case law. Neither counsel took issue with their counterpart's analysis of the law. Mr Jenkins for the respondent made little legal submission by reference to specific cases. Mr Henry for the claimant submitted a document entitled "Claimant's opening submissions" which he actually emphasised as closing submissions, in which he makes reference to the legal provisions.
- 3.2 Section 43A Employment Rights Act 1996 defines a protected disclosure as meaning a qualifying disclosure as defined by section 43B, and being

one which is made by a worker in accordance with any of the sections 43C-43H.

- 3.3 Section 43B Employment Rights Act 1996 defines a qualifying disclosure as being, “a disclosure of information which in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following matters”, and this case specifically that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject (section 43B(b)), and that the health or safety of any individual has been, is being or is likely to be endangered (section 43B(d) Employment Rights Act 1996).
- 3.4 Sections 43C-43H make provision in relation to the identity of the person to whom a disclosure qualifying for protection ought to be made. That includes at section 43C disclosure to an employer or other responsible person.
- 3.5 Section 47B Employment Rights Act 1996 provides that a worker has a right not to be subjected to any detriment by his employer on the ground that the worker has made a protected disclosure.
- 3.6 Section 103A Employment Rights Act 1996 provides that an employee who is dismissed shall be regarded (that is automatically) as unfairly dismissed if the reason (or if more than one the principal reason) for the dismissal is that the employee made a protected disclosure.
- 3.7 We were referred to the following authorities which were accurately quoted and cited by Mr Henry in his written submission C3, namely:
 - 3.7.1 **Salisbury NHS Trust v Wyeth** (EAT 12 June 2015 unreported) to the effect that an easy way of describing the difference in approach between a detriment claim and an unfair dismissal claim is that detriment protection mirrors the language of discrimination protection, whereas the language of automatic unfair dismissal mirrors that of unfair dismissal;
 - 3.7.2 **Blackbay Ventures Limited (t/a Chemistree) v Gahir [2014] ICR 747**. The EAT set out its guidance on how a Tribunal should consider whistle-blowing claims, and that guidance was set out extensively by Mr Henry in C3.
 - 3.7.3 **The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014** governed the activities of the respondent with regard to its residents at all material times.

4. Application of Law to Facts

In applying the law briefly summarised above to the facts found, I set out below again the questions set for the Tribunal together with the answers to each question sequentially as follows:

- 4.1 Did the claimant make a protected disclosure?

- 4.1.1 The claimant reasonably believed that the respondent was falling short in its care of residents because of a perceived insufficiency of staff, particularly during night shifts. The claimant understood that there should be available to the residents two or three members of staff at all times because of the number of residents and their needs, but that the staffing levels were regularly too low. She also reasonably believed that the policy of providing each resident who had incontinence with only one incontinence pad at night was inadequate provision for some of the residents. She reasonably believed that the instruction given to her by the Home Nurse to administer medication without her having received the appropriate training potentially put residents at risk. The claimant disclosed this information in the context of breaches of legal obligation and endangerment to health and safety to the Home Registered Manager and to the CQC.
- 4.2 In respect of the alleged disclosures, did the information relate to a breach of legal obligation on the part of the respondent under the **Health and Social Care Act 2008 (Regulated Activities) Regulations 2014** and the respondent's duty of care to its residents? Yes. The disclosures related to the care of vulnerable residents and regulated care standards.
- 4.3 Did the claimant have a reasonable belief that the information tended to show one of the relevant failures? Yes, as above.
- 4.4 Did the claimant have a reasonable belief that the disclosures were in the public interest? Yes. The disclosures were at least relevant to the 30 residents at Orchard Manor under the care of the claimant when she was on night duty. In fact as these matters were matters of policy and general practice was far as the respondent was concerned, there were much wider implications potentially for residents in each of the Homes owned and/or managed by the respondent across the United Kingdom. Such alleged breaches of legal obligation and health and safety endangerment also had implications for the care staff involved insofar as their personal and professional liability was concerned. A large number of people were potentially affected in relation to the information disclosed. The claimant appreciated this. The information was both in the public interest and the claimant reasonably believed it to be so.
- 4.5 In respect of the alleged disclosure to the CQC, did the claimant reasonably believe that the person to whom she made the disclosure had responsibility for the relevant failure? The claimant raised the matters with her immediate line manager and they together raised them with the Home Manager; the Home Manager was dismissive and threatening. The respondent is regulated by CQC and it was the appropriate body to whom the claimant ought to disclose such matters in the circumstances.
- 4.6 What is the alleged detriment the claimant suffered as a result of the protected disclosures in circumstances where she says she was threatened by the home manager upon making the disclosure? Because the claimant made the comments that she made to the Registered Home

Manager Ms De Biasi in September 2016, Ms De Biasi issued the claimant with a threat which could be characterised by the colloquial expressions “put up or shut up” or “its my way or the highway” but in any event what the clear words spoken were understood by the claimant to mean was that if she wanted to remain in employment she had to do what she was told. Insofar as the claimant was concerned, to do what she was told would be a breach of legal obligation and endangerment to the health and safety of residents. The claimant was not prepared to do that. The claimant reasonably understood that her future with the respondent and her livelihood was being threatened by Ms De Biasi and she was therefore required to work under a threat. That is a detriment.

- 4.7 Was the alleged detriment on the ground that the claimant had made a protected disclosure? Yes. The Home Manager’s detrimental comment was in direct response to the claimant’s disclosures.
- 4.8 As regards automatically unfair dismissal – insofar as the issues have been answered as above, was the reason (or, if more than one, the principal reason) for the dismissal that the claimant made a protected disclosure? Yes it was. The Tribunal has no hesitation in drawing an inference from all that it has heard and seen that Ms Kewley’s decision to dismiss the claimant, or as she would put it “to end her probation”, was wholly and directly related to the reports that the claimant had made to the CQC. The point was made by the respondent that Ms Owen is still employed by it and that Stephanie Williams was not dismissed at the time (albeit we do not know what happened to her subsequently). The Tribunal had no evidence that either Ms Owen or Ms Williams made any report to the CQC. It was the report to the CQC that led to the CQC contacting the respondent and eventually conducting an unannounced audit and inspection. The Registered Home Manager will have known from the date of contact from the CQC in relation to the claimant’s report that the respondent would have difficulty in showing progress towards achieving the compliance with its action plan by 31 October 2016. It is logical that this was behind the comment made by one of the claimant's colleagues to the effect that Ms De Biasi was upset and that the claimant would be “down the road”. This was also consistent with Ms De Biasi’s initial comment to the claimant when she approached Ms De Biasi together with Mr Owen and Ms Williams. Ms De Biasi’s threat was to be realised. The claimant was not prepared to comply meekly with policies which she considered to be contrary to the interests of the residents, in breach of legal obligations to them and endangering their health and safety, and therefore was being forced to leave her employment.

Employment Judge T V Ryan
Date: 02.06.17

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
8 June 2017
FOR THE TRIBUNAL OFFICE